

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION

2014 DEC -3 PM 4: 23

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6815

DATE COMPLAINT FILED: May 2, 2014

DATE OF NOTIFICATIONS: May 8, 2014

LAST RESPONSE RECEIVED: June 23, 2014

DATE ACTIVATED: September 4, 2014

EXPIRATION OF SOL: February 14, 2019
(earliest)/April 15, 2019 (latest)

ELECTION CYCLE: 2014

COMPLAINANT:

New Hampshire Democratic Party

RESPONDENTS:

New Hampshire for Scott Brown and Paul Kilgore
in his official capacity as treasurer
Scott Brown

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(2)¹

52 U.S.C. § 30102(e)(1)

52 U.S.C. § 30103

52 U.S.C. § 30104(a)

52 U.S.C. § 30104(b)(4)(a)

11 C.F.R. § 100.72

11 C.F.R. § 100.131

11 C.F.R. § 104.3(d)

11 C.F.R. § 104.11(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Senate candidate Scott Brown filed his Statement of Candidacy late, and that New Hampshire for Scott Brown ("Committee") filed its Statement of Organization late and failed to report expenses Brown incurred prior to his candidacy to explore running for the Senate seat. Respondents assert that the Statement of Candidacy and Statement

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 of Organization were each timely filed, and that it accurately reported its disbursements because
2 it incurred no expenses prior to Brown becoming a candidate. The Committee did concede,
3 however, that it "arguably" incurred a \$21,060 debt for website and video expenses during the
4 reporting period, and it amended its first disclosure report to include those expenses as a debt.

5 As detailed below, we recommend that the Commission exercise its prosecutorial
6 discretion and dismiss the allegations that Brown violated 52 U.S.C. § 30102(e) (formerly
7 2 U.S.C. § 432(e)) by filing his Statement of Candidacy late, and that the Committee violated
8 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)) by filing its Statement of Organization late
9 and 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) by failing to disclose expenditures. We
10 further recommend that the Commission close the file.

11 II. FACTS

12 On March 14, 2014, former Senator Scott Brown announced the formation of an
13 exploratory committee in connection with the election for the United States Senate seat in New
14 Hampshire and commenced a "listening tour" of the state.² On March 21, Brown filed a
15 Statement of Candidacy with the Commission and a Statement of Organization for the "New
16 Hampshire for Scott Brown Exploratory Committee."³ The exploratory committee amended its
17 Statement of Organization on April 9 to remove the "exploratory" designation,⁴ and Brown

² See <http://www.politico.com/story/2014/03/scott-brown-new-hampshire-senate-election-2014-104684.html>. Brown also had an existing state Leadership PAC. On October 11, 2013, Brown registered a political committee in New Hampshire, apparently to serve as his Leadership PAC. The People's Seat PAC, Inc., made no disbursements and only contributions to New Hampshire political committees and groups from its inception to September 5, 2014. See <http://sos.nh.gov/2014PACN-Z.aspx?id=47134>.

³ See <http://docquery.fec.gov/pdf/194/14020173194/14020173194.pdf> and <http://docquery.fec.gov/pdf/198/14020173198/14020173198.pdf>. Both the Complaint and Response mistakenly refer to March 14, 2014, as the filing date.

⁴ See <http://docquery.fec.gov/pdf/121/14020180121/14020180121.pdf>.

1 officially announced his candidacy on April 10.⁵ The Committee filed its first disclosure report,
2 the April 2014 Quarterly Report, disclosing no disbursements and almost \$275,000 in
3 contributions for the January 1 through March 31 reporting period.

4 The Complaint alleges that Brown failed to report on the April 2014 Quarterly Report
5 any testing-the-waters expenses he incurred while traveling around New Hampshire for "almost
6 a year" exploring a possible candidacy, including the "listening tour" he commenced on March
7 14, 2014.⁶ The Complaint cites to several news articles chronicling Brown's travels around the
8 state where he appeared and spoke at local events and raised funds for local candidates.⁷ In
9 addition, the Complaint alleges that Brown must have incurred routine administrative campaign
10 expenses during his testing-the-waters period for renting a post office box, opening a bank
11 account, and hiring campaign staff.⁸

12 The Complaint also alleges that Respondents failed to report expenses related to its
13 internet activities and a television ad. Specifically, the Committee did not report expenses for:
14 (1) Brown's "coming soon" website launched in January 2014, (2) Brown's official campaign
15 website, which became fully operational on March 14, and (3) a web video, also available March
16 14, promoting Brown's candidacy, which included footage of interviews with New Hampshire
17 residents and New Hampshire scenery.⁹ In addition, an April 10, 2014, television advertisement

⁵ See www.bostonlobe.com/intro/2014/04/10/scott-brown-makes-senate-bid-official-takes-aim-jeanne-shaheen/gysM9Q1fFGTo8QHJM616tK/story.html.

⁶ Compl. at 1, 3.

⁷ See *id.* at 2-3.

⁸ See *id.* at 1, 5-6.

⁹ *Id.* at 3. See <http://www.youtube.com/watch?v=cFR1VpcecRA>. Two more videos appeared on Brown's website later in March, both of which featured footage of Brown giving speeches, traveling around New Hampshire, and interacting with residents. *Id.* at 4. See <http://www.youtube.com/watch?v=FpgAy1aQH9U> (published March 21, 2014) and <http://www.youtube.com/watch?v=QAwfpz8qLM> (published March 27, 2014).

1 reportedly included footage of Brown that was taken on March 22 and 24.¹⁰ According to the
2 complainant, these web and television communications contained the disclaimer, "Paid for by
3 New Hampshire for Scott Brown Exploratory Committee," and must have generated reportable
4 costs during the April 2014 Quarterly reporting period.¹¹

5 Lastly, the Complaint alleges that Brown acknowledged in an interview that he and his
6 spouse decided on Valentine's Day (February 14, 2014) in a private conversation that he would
7 become a candidate, and because it is likely he spent the over \$5,000 by that date, he should have
8 filed his Statement of Candidacy by March 1, 2014 instead of March 21, and a Statement of
9 Organization 10 days thereafter.¹²

10 While not acknowledging that it violated the Act, the Committee states that it "arguably
11 incurred minor expenses in the final days of the reporting period."¹³ The Committee states that,
12 "in mid-March, the Respondents began the campaign activity listed in the complaint, including
13 the production of the web videos, the 'listening tour,' the production of the television ad, and the
14 updates to Mr. Brown's website."¹⁴ The Committee states that it did not enter into a contract
15 with "these vendors" or receive an invoice until after the close of the April Quarterly reporting
16 period.¹⁵

17 Respondents also asserted that Brown used personal funds totaling "well under \$1,000"
18 or "less than \$1,000" for travel expenses in the reporting period, including transportation, meals

¹⁰ *Id.* See <http://www.youtube.com/watch?v=s4arc6oCNr0> (published April 10, 2014).

¹¹ *Id.* at 7-8.

¹² *Id.* at 3, 7.

¹³ Resp. at 2.

¹⁴ *Id.* at 2-3.

¹⁵ *Id.* at 3-4.

1 and lodging.¹⁶ The Committee maintains, however, that these “minor personal travel costs” are
2 “not reportable as a contribution or campaign committee expenditure.”¹⁷

3 In conjunction with filing the Response, the Committee amended its April 2014 Quarterly
4 Report to disclose the web and video expense of \$21,060 as a debt. The Committee paid the debt
5 on April 30, according to its July 2014 Quarterly Report. It did not report the \$1,000 in travel
6 expenses.¹⁸

7 Regarding Brown’s Statement of Candidacy, the Response states that it was timely
8 because, “as of March 14, 2014, Mr. Brown had not accepted any contributions and had not
9 made any expenditures,” and that, “when Mr. Brown decided in his mind to run for the election
10 is irrelevant to when he became a ‘candidate’” under the Act.¹⁹

11 III. LEGAL ANALYSIS

12 Under the Federal Election Campaign Act of 1971, as amended, (the “Act”), “an
13 individual who seeks nomination for election, or election, to Federal office” is a candidate and
14 “shall be deemed to seek nomination for election, or election” when he receives contributions or
15 makes expenditures in excess of \$5,000.²⁰ The Commission’s testing-the-waters regulations
16 create exemptions to the definitions of contribution and expenditure that permit an individual to
17 receive or spend funds to determine the feasibility of becoming a candidate.²¹ Once an

¹⁶ *Id.* at 3, n.1; 4-5.

¹⁷ *Id.* at 3, n.1.

¹⁸ The Committee filed a Form 99 Miscellaneous Report with its amended April 2014 Quarterly Report, making the same arguments as in the Response. *See supra* p. 4-5. The Reports Analysis Division (“RAD”) sent a follow-up Request For Additional Information to the Committee to further explain the \$21,060 in increased activity, but the Committee merely referred back to the Form 99. The increased activity does not meet RAD’s threshold for referral to the Office of General Counsel or the Office of Alternative Dispute Resolution.

¹⁹ Resp. at 4.

²⁰ 52 U.S.C. § 30101(2) (formerly 2 U.S.C. § 431(2)).

²¹ *See* 11 C.F.R. §§ 100.72(a), 100.131(a).

1 individual begins to campaign or decides to become a candidate, funds that were raised or spent
2 to "test the waters" apply to the \$5,000 threshold for qualifying as a candidate, and the candidate
3 must register with the Commission.²² And after an individual reaches candidate status, all
4 reportable amounts from the beginning of the testing-the-waters period must be disclosed on the
5 first financial disclosure report filed by the candidate's committee, even if the funds were
6 received or expended prior to the current reporting period.²³

7 A candidate for federal office must designate a principal campaign committee no later
8 than 15 days after becoming a candidate.²⁴ The designated principal campaign committee is
9 required to file a Statement of Organization within ten days of designation or report any change
10 in information previously submitted on its Statement of Organization within ten days of the
11 change.²⁵

12 The Act requires treasurers of political committees to file reports disclosing the total
13 amount of receipts, disbursements, and outstanding debts and obligations for the reporting
14 period.²⁶ A debt exceeding \$500 must be reported on Schedule D in the report covering the date
15 on which the debt was incurred.²⁷

²² *Id.*; see Factual and Legal Analysis at 3, MUR 6533 (Perry Haney); Factual and Legal Analysis at 5, MUR 6449 (Jon Bruning).

²³ See 11 C.F.R. §§ 101.3, 104.3(a), 104.3(b). Moreover, an individual does not become a candidate solely by voluntarily registering and reporting with the Commission, nor is such individual or the individual's committee required to file all disclosure reports under the Act and Commission regulations, unless the individual becomes a candidate under the Act and Commission regulations. 11 C.F.R. § 104.1(b).

²⁴ 52 U.S.C. § 30102(e)(1) (formerly 2 U.S.C. § 432(e)(1)).

²⁵ 52 U.S.C. § 30103(a), (c) (formerly 2 U.S.C. § 433(a), (c)).

²⁶ 52 U.S.C. §§ 30104(b)(2), (4), (8) (formerly 2 U.S.C. §§ 434(b)(2), (4), (8)).

²⁷ 11 C.F.R. §§ 104.3(d), 104.11.

1 A payment by a candidate from personal funds for campaign expenses is an expenditure or
2 contribution unless an exemption applies.²⁸ One exemption provides that campaign-related
3 transportation or subsistence expenses up to \$1,000 in aggregate for a single election paid for by
4 any individual, including a candidate, and not reimbursed, are not contributions or
5 expenditures.²⁹

6 **A. Reporting of Debts and Testing-the-Waters Expenses**

7 The Committee's original April 2014 Quarterly Report, its first-filed report, disclosed no
8 expenditures and no debt. The Complaint alleges that Respondents failed to report
9 disbursements made during the testing-the-waters period, including costs for web and video
10 production, travel, campaign staff, a post office box, and opening a bank account.³⁰

11 In response, Respondents assert that they did not "make any expenditures with regard to
12 Mr. Brown's potential run for the New Hampshire Senate seat"³¹ except for "minor personal
13 travel costs totaling less than \$1,000."³² If the travel expenses incurred by Brown were indeed
14 less than \$1,000 — and we have no information to the contrary — these expenditures appear to
15 be exempt from the Act's definitions of contributions and expenditures, and did not need to be
16 reported.³³ Further, the expenses for a post office box and bank account were likely *de minimis*,

²⁸ See 52 U.S.C. §§ 30101(8)(A)(i), (9)(A)(i) (formerly 2 U.S.C. §§ 431(8)(A)(i), (9)(A)(i)).

²⁹ 52 U.S.C. § 30101(8)(B)(iv) (formerly 2 U.S.C. § 431(8)(B)(iv)); 11 C.F.R. §§ 100.79(a)(1), 139(a)(1).

³⁰ Compl. at 6.

³¹ Resp. at 2.

³² *Id.* at 4-5.

³³ See 52 U.S.C. § 10101(8)(B)(iv) (formerly 2 U.S.C. § 431(8)(B)(iv)).

10044101-1080

1 and we have no specific information to support the complaint's allegation that Brown had made
2 any payments for staffing expenses prior to the end of the reporting period.³⁴

3 Respondents acknowledge, however, that they incurred expenses totalling \$21,060 for
4 web and video production services after Brown filed his Statement of Candidacy, but during the
5 reporting period.³⁵ Respondents note that they were not invoiced for these services until after the
6 reporting period ended. Debt exceeding \$500, however, must be disclosed when incurred.³⁶
7 Because the Committee incurred the web and video expenses during the April 2014 Quarterly
8 Reporting period, it should have reported these expenses as debts on the report. Respondents,
9 therefore, violated 52 U.S.C. § 30104(b)(8)(A) (formerly 2 U.S.C. § 434(b)(8)(A)) by failing to
10 accurately report a debt in their original April 2014 Quarterly Disclosure Report.³⁷

11 Based on the foregoing and because Respondents amended the April 2014 Quarterly
12 Report to accurately reflect their incurred debt of \$21,060 and did so approximately 60 days after
13 the filing date of the original report, we recommend, however, that the Commission exercise its
14 prosecutorial discretion³⁸ and dismiss the allegation that Scott Brown and New Hampshire for

³⁴ The Response does not specifically address these expenses. The available information appears to show that Brown only began fundraising after March 14 and we can reasonably infer that the campaign set up a bank account and post office box around that time and that any related expenses were likely *de minimis*.

³⁵ Respondents state, "[a]rguably, in the last weeks of the reporting period, the Committee did incur an expense of producing a website and web video. These materials were used by the Committee in the First Quarter, although it did not receive an invoice until the Second Quarter." Resp. at 4.

³⁶ See 11 C.F.R. § 104.11(b); Conciliation Agreement MUR 6177 (21st Century Democrats).

³⁷ And as noted, the Committee reported these debts on an Amended April 2014 Quarterly Report filed on June 20, 2014.

³⁸ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

16044391281

1 Scott Brown and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. § 30104(b)
2 (formerly 2 U.S.C. § 434(b)) by failing to timely report a debt³⁹ and testing-the-waters expenses.

3 **B. Statement of Candidacy and Statement of Organization**

4 The Complaint alleges that Brown became a candidate on February 14, 2014. The
5 Complaint cites to an April 2014 interview during which Brown stated that he and his wife
6 decided on Valentine's Day (February 14) that he would run for office.⁴⁰ The complaint alleges
7 that because Brown likely spent the requisite \$5,000 by February 14, he should have filed his
8 Form 2 (Statement of Candidacy) no later than March 1, 2014 (15 days after February 14) and
9 the Committee should have filed its Form 1 (Statement of Organization) by March 11 (10 days
10 later). Respondents filed their Statements of Candidacy and Organization on March 21, 2014.
11 Even assuming *arguendo* that Brown became a candidate on February 14, the Statements of
12 Candidacy and Organization would have been less than 30 days late and the Committee's first
13 required disclosure report would have been the same 2014 April Quarterly report that it timely
14 filed.⁴¹ Under these circumstances, we recommend that the Commission exercise its
15 prosecutorial discretion and dismiss the allegation that Scott Brown violated 52 U.S.C.
16 § 30102(e) (formerly 2 U.S.C. § 432(e)) and New Hampshire for Scott Brown and Paul Kilgore

³⁹ Recent reporting violation matters where the Commission has found reason to believe had much higher amounts in violation ("AIV"). See, e.g., MUR 6774 (Liberatore for Congress 2012) (AIV of \$150,000); MUR 6758 (Rob Zervan for Congress) (AIV of \$438,682).

⁴⁰ Compl. at 3. See http://www.wmur.com/politics/closeup/CloseUP-Interview-with-Scott-Brown/25658422?utm_source=dlvr.it&utm_medium=twitter&utm_campaign=wmur9.

⁴¹ Further, the available record does not provide enough information to establish when Brown reached the \$5,000 contribution or expenditure threshold. Since the website, which published video footage of Brown, became available for viewing on March 14, it is likely that the production of the website and videos must have occurred earlier than March 14, or "mid-March" as Respondents assert. Neither the Response nor Respondents' disclosure reports reveal exactly when they incurred the \$21,060 debt for the web and video production. Schedule D does not require reporting an exact date. See Amended April 2014 Quarterly <http://docquery.fec.gov/pdf/445/14020423445/14020423445.pdf>.

1 in his official capacity as treasurer violated 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)).⁴²

2 Finally, we recommend that the Commission close the file.

3 **IV. RECOMMENDATIONS**

- 4 1. Dismiss the allegation that Scott Brown and New Hampshire for Scott Brown and
5 Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. § 30104(b)
6 and 11 C.F.R. § 100.131(a);
7
- 8 2. Dismiss the allegation that Scott Brown violated 52 U.S.C. § 30102(e);
9
- 10 3. Dismiss the allegation that New Hampshire for Scott Brown and Paul Kilgore in
11 his official capacity as treasurer violated 52 U.S.C. § 30103(a);
12
- 13 4. Approve the attached Factual and Legal Analysis;
14
- 15 5. Approve the appropriate letters; and

⁴² See, e.g., MUR 6533 (Perry Haney) (Commission dismissed late-filed Form 2 allegation where first required disclosure report would have been the same and was timely filed); see also MUR 6282 (Friends of John Lee Smith) (EPS dismissal where Statement of Candidacy filed more than 30 days late); MUR 6374 (Roly Arrojo for Congress) (EPS dismissal where Statement of Candidacy filed 60 days late).

6. Close the file.

Date

12-3-14

BY:

Kathleen Guith
Deputy Associate General Counsel for
Enforcement

Peter Blumberg
Assistant General Counsel

Elena Paoli
Attorney

1900474301-12884